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| 09/927,948      | 08/10/2001  | Kim P. Viesselmann   | 420.004             | 5401             |

7590

12/11/2003

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| EXAMINER |
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SELF, SHELLEY M

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3725

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/927,948

Applicant(s)

VIESELMANN ET AL.

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 7-11, 13, 14, 16 and 18-21 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 6, 12, 15, 17 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

The amendment filed on November 26, 2003 under 37 CFR 1.131 has been carefully considered and an action on the merits follows.

The examiner inadvertently listed the incorrect reference number(s) in the previous Office Action.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 9, 10, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Clostermeyer et al. (4,566,380). With regard to claims 1, 9, 18 and 19, Clostermeyer discloses a bale kicker assembly (16, 19) for a round baler having a bale-forming chamber comprising an inner kicker (19), an outer kicker (16), a lifting and lowering arrangement (22, 24, 25, 26).

With regards to claims 2, 10, Clostermeyer discloses the inner end of the outer kicker (16) pivotably mounted (17) to the inner kicker (19) section.

With regard to claim 7, Clostermeyer discloses the inner kicker (19) mount for pivoting movement (figs. 1, 2).

With regard to claim 11, Clostermeyer disclose a pivot connection enabling the outer section to pivot (fig. 2).

With regard to claim 13, Clostermeyer discloses a sensor arrangement (col. 3, lines 50-65).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clostermeyer et al. (4,566,380) in view of Jennings (4,458,587). Clostermeyer discloses a spring arrangement interposed between the tailgate and the outer section of the bale kicker (fig. 1) so as to maintain the bale kicker in a desired location during bale formation. Clostermeyer does not disclose a latch arrangement interposed between the tailgate and the outer section of the bale kicker. Jennings teaches in an Adjustable Bale Kicker the use of a latch arrangement (col. 4, lines 5-12) to maintain the bale kicker (90) at a desired location during bale formation. Because the references are from a similar art and deal with a similar problem (i.e. maintaining the bale kicker at a location during operation) it would have been obvious to one having ordinary skill in the art at the time of the invention to replace Clostermeyer's spring arrangement with a latch arrangement as taught by Jennings so as to maintain the bale kicker at a desired location during bale formation.

Claim 8, 14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clostermeyer et al. (4,566,380) in view of Olin (5,263,410). Clostermeyer discloses a spring biasing means in connection with a sensor (31) for lifting/lowering the bale kicker. Clostermeyer does not disclose the lifting and lowering arrangement comprising a cylinder assembly. Olin teaches in a bale discharge apparatus, the use of a cylinder assembly (71) having an extendable and retractable member. Olin teaches this construction so as to lift/lower a bale kicker. Because the references are from a similar art and deal with a similar problem (i.e. bale discharge means, bale kicker) it would have been obvious to one having ordinary skill in the art to replace Clostermeyer's biasing, linkage/spring extension/retraction lifting/lowering arrangement with a known mechanical expedient biasing means (i.e. piston cylinder) lifting/lowering arrangement as taught by Olin so as to lift and lower (extent retract) the bale kicker.

#### ***Allowable Subject Matter***

Claims 3, 4, 6, 12, 15, 17 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments have been carefully considered but are deemed moot in view of the above rejection.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (703) 305-5299. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Allen Ostrager can be reached at (703) 308-3136. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

SSelf  
December 10, 2003



**ALLEN OSTRAGER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**